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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1605 of 1996

SPECIAL CRIMINAL APPLICATION NO 1605 of 1996

SPECIAL CRIMINAL APPLICATION NO 1606 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.J. VAIDYA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? YES

2. To be referred to the Reporter or not ? YES

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? NO

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil  
Judge ? YES

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DAHAYABHAI NARANBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR DR BHATT for Petitioner

CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 24/01/97

ORAL JUDGEMENT

Rule. Mr. U.A Trivedi, the learned APP waives service of Rule on behalf of respondent-State.

2. The petitioners by these three Special Criminal Applications have challenged the impugned judgment and order dated 17-10-1996 rendered in three different Criminal Revision Applications, bearing Criminal Revision Applications Nos. 98/96, 99/96 and 100/96, by the learned Additional Sessions Judge, Vyara, confirming the judgment and order dated 17-8-1996 passed by the learned JMFC Bardoli, interalia praying for quashing and setting aside the impugned order and releasing three vehicles bearing Nos. (1) GAX-9165 (Maruti car-Chesis No. 277108) ; (2) GJ-1-T-4845 (Truck); and (3) GJ-16-C-171 (Maruti Van-Chesis No. 940993). The three vehicles in question came to be seized in the matter of prohibition case the same being CR.No.III 378/96 registered at Palsana Police Station alleging offences punishable under sections 66(1)(b), 65 (A),(E), 81 and 83 of the Bombay Prohibition Act against one Rajesh Kalidas Patel and 9 others.

3. Heard Mr. D.R. Bhatt, the learned advocate appearing for the petitioners and Mr. U.A.Trivedi, the learned APP appearing for the State. Perused the affidavits filed by K.K Rathod, PI, LCB, Surat (Rural). The said affidavits are directed to be taken on record. From paras 3, 4 and 5 of the said affidavits, it appears that the alleged offence has taken place either under the direct supervision or active involvement or connivance of the petitioners concerned. If the commission of the alleged offence is suspected by the police was also under supervision or active involvement of the owners of vehicles in question, then in that case, it is difficult to understand as to why so far no chargesheet is filed against them ! This is too serious a thing and accordingly it is brought to the notice of the Director General of Police to inquire into the matter and take appropriate action against the concerned Police Officer, if found at fault. The concerned police officer shall accordingly further reapply himself and on the basis of the material available, file the chargesheet, if necessary against the concerned owners (petitioners) of

the vehicles. The concerned police officer shall also produce copies of the aforesaid three affidavits before the Director General of Police and trial court. Further, the trial court, shall bear in mind the contents thereof while trying the case, and in case if no chargesheet is filed by the Investigating Officer against the owners of the vehicles join them as accused of its own if material brought on the record so warrants.

5. In the result, aforesaid three petitions are allowed. The impugned judgment and order is hereby quashed and set aside. Having regard to the facts and circumstances of the case, pending trial, by way of an interim relief, the aforesaid three muddamal vehicles, which are subject matter of these petitions, are ordered to be handed over to the concerned petitioners on the following terms and conditions :

- (1) The petitioners shall furnish a personal bond as well as sureties to the tune of Rs.2 lacs for each vehicle in the court of the learned Magistrate.
- (2) The petitioners shall keep the vehicles in question in road-worthy condition.
- (3) The petitioners shall not transfer or make any attempt to transfer or in any other way alienate the muddamal vehicles in any manner whatsoever.
- (4) The petitioners will also not use the concerned vehicles for the purpose of any criminal activity.
- (5) The petitioners shall produce the concerned vehicles as and when so required by the court.
- (6) The petitioners will take the concerned vehicles to Palsana Police Station on first Sunday of every month between 9-30 AM and 5-30 PM for the purpose of check-up and inspection.

5. Further, since the concerned vehicles were seized and now by virtue of this interim order are handed over to the petitioners, the trial court is directed to proceed with the trial and decide the same as expeditiously as possible preferably on or before 31-10-1997. The concerned Investigating Officer or his successor in office shall personally remain present

before the court on each date of hearing and keep the prosecution witnesses present before the court. Infact, apart this case in each and every criminal case, it is the duty of the investigating officer or his successor in office to personally remain present before the court till the time all witnesses are kept present before the court and examined and he too examined. It is the part and parcel of the duty of the Investigating Officer, that till the trial is over and material witnesses examined, his duty as an Investigating Officer does not come to an end by merely submitting the chargesheet in the court! The learned Magistrate shall accordingly direct the Investigating Officer to comply with the directions of this court looking to the gravity and seriousness of the offence . In case the concerned Police Officer does not remain present, his presence can be enforced by issuing bailable and even non-bailable warrant hearing the learned PP.

6. It is further made clear that irrespective of the order of conviction and sentence that may be passed against the accused, already chargesheeted, three vehicles in question released by way of this interim order, shall be liable to confiscation if the owners fail to satisfy the trial court to the desired extent as provided in the relevant sections of the Bombay Prohibition Act, 1951. In such types of cases under the Prohibition Act, where vehicles are involved in the commission of offences-in the first instance it shall be the duty of the court to closely examine whether their owners are directly or indirectly involved or not. In the second instance if it is prima-facie found that they are involved, then in that case, they shall be joined as accused persons alongwith other accused for the alleged offences punishable under the Prohibition Act, and in the third instance, while raising the point of determination viz. whether prosecution proves offences alleged against the accused the learned Magistrate shall also raise further separate point for determination viz. whether the mudammal vehicle is liable to be confiscated or not ? what orders ? This is absolutely necessary with a view to see that the confiscation proceedings are disposed of with the culmination of trial itself by a common judgment.

7. In the result, these three Special Criminal Applications are allowed in terms of the observation and interim order passed pending trial as stated above. Rule made absolute.

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